

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

Application 27209 Permit 19073

**ORDER APPROVING A NEW DEVELOPMENT SCHEDULE
AND ADDING ADDITIONAL TERMS TO THE PERMIT PER
CONDITION 12 SETTLEMENT AGREEMENT DATED MARCH 12, 1995
(AGREEMENT) PURSUANT TO THE SACRAMENTO COUNTY
SUPERIOR COURT, JUDICIAL COUNCIL COORDINATION
PROCEEDINGS NO. 2065**

WHEREAS:

1. Permit 19073 was issued to Buttes Gas and Oil Company on December 21, 1983.
2. Permit 19073 was subsequently assigned to Juliana Vineyards on June 2, 1992.
3. A petition for an extension of time in which to develop the project and apply the water to the proposed use was filed with the State Water Resources Control Board on June 19, 1996.
4. The permittee has proceeded with diligence and good cause has been shown for said extension of time.

NOW, THEREFORE, IT IS ORDERED THAT:

1. A new development schedule is approved as follows:

Complete application of the water to the proposed use shall be made by December 31, 2003.

2. Permittee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:

(1) Permittee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the division of water under this permit for noncompliance with the Agreement.

(2) Diversion of water under this permit shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The permittee shall be responsible for partial payment of the watermaster costs in accordance with the Agreement.

(3) Permittee shall measure reservoir storage at the beginning and end of the Accumulation Season. Contribution to Annual Depletion shall be determined to be the change in storage during the Accumulation Season. The permittee shall pay for the cost of installing and maintaining any water level measuring device required by the SWRCB.

(3a) If reasonably determined to be necessary by the watermaster to determining Annual Depletion, Big Lake (Dick Week Reservoir) shall have a water level measuring device that documents continuous reservoir levels during the Accumulation Season, purchased (and replaced if necessary) by the watermaster and installed and maintained at the expense of the permittee.

(4) Permittee shall install at permittee's own cost such additional measurement devices as are necessary to measure actual depletions, if the watermaster determines that additional measures are necessary, consistent with paragraph 3.A.3 (Measuring Devices) of the Agreement.

(5) Permittee shall report to the watermaster annually, on or about September 1, the amount of water diverted to storage under this permit at the beginning and end of the Accumulation Season as required by the watermaster. Such annual reports shall be made in writing on forms approved by the watermaster.

(6) Permittee shall allow the watermaster reasonable access to the project covered by this permit to inspect measuring equipment and to verify compliance to terms and conditions of the Agreement, upon 48-hour prior notice and upon such reasonable conditions as permittee may prescribe.

(7) Permittee is hereby put on notice that there may be years when diversion of water under this permit will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this license.

(8) In the event Allowable Depletion is exceeded in any year, permittee shall release water diverted to storage to the extent necessary to bring the Allowable Depletion into compliance. Permittee's obligation to release water from storage shall be governed by the repayment provisions of the Agreement. (Agreement pp. 9, 10, and 11)

(9) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa: (1) does not drop below 640,000 acre-feet in storage as of May 1, permittee shall have three years, starting in the next Accumulation Season, to make up or repay permittee's excess diversions; or (2) does not reach 640,000 acre-feet of storage as of May 1, permittee shall have one year starting in the next Accumulation Season, to make up or repay permittee's excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, permittee shall be excused from any further obligation for repayment of the overage.

(10) Permittee shall provide watermaster prior notice of any repayment. Repayment may be made either by releases from storage, curtailment of direct diversion, or by the provision of water from other sources.

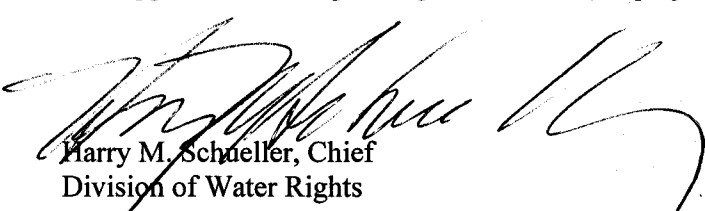
(11) Permittee shall notify the watermaster of any change in ownership of land, changes in the water right or changes in address related to the license.

(12) Permittee hereby put on notice of permittee's right, upon reasonable prior notice, to inspect and to copy, at permittee's own expense, all records and reports of the watermaster.

(13) Solely for purposes of administering Post-Reservation Depletion, the average annual depletion assigned to this project is 247 acre-feet per annum as calculated by the watermaster using information described in Exhibit C of the Condition 12 Settlement Agreement. Permittee shall notify the watermaster of any change in crop type, acreage irrigated, and irrigation method. Any change in water usage which results in an increase in average annual depletion of more than 10 percent for non-weather related reasons, as determined by the watermaster, will require filing a new water right application. (Agreement pp. 13-15, Exhibit E).

(14) Inclusion in the permit of certain provisions of this Agreement shall not be construed as disapproval of other provisions of the Agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.

3. The State Water Resources Control Board (SWRCB) shall have continuing authority under Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, and the common law public trust doctrine over this license to delete, revise, amend, or adopt new terms or conditions to: (1) implement the March 10, 1995, Condition 12 Settlement Agreement and any amendments to the agreement and (2) make the terms or conditions consistent with any order of the superior court. No action shall be taken pursuant to this paragraph unless the SWRCB provides notice to affected parties and provides an opportunity for a hearing.
4. This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.



Harry M. Schueller, Chief
Division of Water Rights

Dated: **APR 20 1999**

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 27209 PERMIT 19073 LICENSE

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE

WHEREAS:

1. Permit 19073 was issued to Buttes Gas and Oil Company on December 21, 1983 pursuant to Application 27209.
2. A petition for an extension of time within which to develop the project and apply the water to the proposed use have been filed with the State Water Resources Control Board (Board).
3. The permittee has proceeded with diligence and good cause has been shown for the extension of time.

NOW, THEREFORE, IT IS ORDERED THAT:

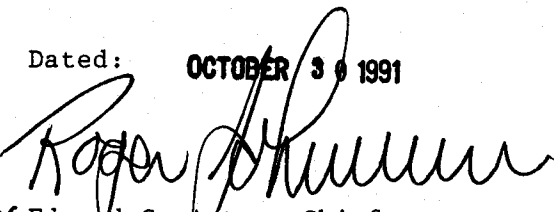
1. Condition 7 of the permit be amended to read:

CONSTRUCTION WORK SHALL BE
COMPLETED ON OR BEFORE December 31, 1993 (0000008)

2. Condition 8 of the permit be amended to read:

COMPLETE APPLICATION OF THE
WATER TO THE PROPOSED USE
SHALL BE MADE ON OR BEFORE December 31, 1994 (0000009)

Dated: **OCTOBER 3 1991**


for Edward C. Anton, Chief
Division of Water Rights

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 27209

PERMIT 19073

LICENSE _____

ORDER APPROVING THE ADDITION OF A POINT OF DIVERSION,
AND REDIVERSION AND AMENDING PERMIT

WHEREAS:

1. A petition to add a point of diversion and rediversion on an unnamed stream has been filed with the State Water Resources Control Board.
2. The Board has determined that the petitioned change does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Paragraph 2 of this permit regarding points of diversion and rediversion is amended to read as follows:

Deer Creek - Diversion to offstream storage - South 1,120 feet and East 1,200 feet from NW corner of Section 9, T9N, R5W, MDB&M, being within the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 9, also described as California Coordinates, Zone 2, N 358,900 and E 1,880,400,

Pope Creek - Diversion to offstream storage - South 4,480 feet and West 2,411 feet from NE corner of Section 9, T9N, R5W, MDB&M, being within the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 9, also described as California Coordinates, Zone 2, N 355,700 and E 1,880,400,

Dick Week Reservoir - Diversion to offstream storage - North 300 feet and East 1,200 feet from W $\frac{1}{4}$ corner of Section 10, T9N, R5W, MDB&M, being within SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 10, also described as California Coordinates, Zone 2, N 357,900 and E 1,883,800,

Collector - Diversion to offstream storage - North 15 feet and East 75 feet from S $\frac{1}{4}$ corner of Section 3, T9N, R5W, MDB&M, being within SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 3, also described as California Coordinates, Zone 2, N 360,100 and E 1,885,600,

Collector - Diversion to offstream storage - South 250 feet and West 325 feet from NE corner of Section 10, T9N, R5W, MDB&M, being within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 10, also described as California Coordinates, Zone 2, N 359,800 and E 1,887,900,

Hardester Ranch Reservoir #2 - Offstream storage and Rediversion - South 1,800 feet and East 1,600 from NW corner projected Section 22, T9N, R5W, MDB&M, being within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 22, also describes as California Coordinates, Zone 2, N 349,500 and E 1,887,900,

Hardester Ranch Reservoir #2 (alternate) - Offstream storage and
Rediversion - South 1,500 feet and East 400 feet from the NW
corner of projected Section 22, T9N, R5W, MDB&M, being within
the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 22, also described as
California Coordinates, Zone 2, N 350,900 and E 1,885,700.

2. Paragraph 11 of this permit is deleted. A new Paragraph 11 is added as follows:

Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

Dated:

DECEMBER 22 1987


Walter G. Pettit, Chief
Division of Water Rights

STATE OF CALIFORNIA
~~THE RESOURCES AGENCY~~
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

19073

PERMIT _____

Application 27209 of Buttes Gas and Oil Company *one*
c/o James Hanson, 921 11th Street, Suite 400, Sacramento, California 95814

filed on February 10, 1982, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

(1,3,4) Unnamed Stream (3)
(2) Pope Creek

Pope Creek
Lake Berryessa thence
Putah Creek thence
Yolo Bypass

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Town- ship	Range	Base and Meridian
SEE ADDENDUM					

County of Napa

3. Purpose of use:	4. Place of use:	Section	Town- ship	Range	Base and Meridian	Acres
Heat Protection						
Frost Protection						
Irrigation	SE $\frac{1}{4}$	16	9N	5W	MD	23
	E $\frac{1}{2}$	21	9N	5W	MD	95
		22	9N	5W	MD	146
	N $\frac{1}{4}$ of NW $\frac{1}{4}$	27	9N	5W	MD	24
	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	28	9N	5W	MD	1
					Total	289

The place of use is shown on map filed with the State Water Resources Control Board.

[illegible]

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 250 acre-feet per annum to be collected from November 1 of each year to April 30 of the succeeding year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

The maximum rate of diversion from Dick Week Reservoir, Diversion Point No. 3 to offstream storage shall not exceed 22 cubic feet per second.

(0000005)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

7. Construction work shall be completed by December 1, 1987. —————→

(0000008)

8. Complete application of the water to the authorized use shall be made by December 1, 1988.

(0000009)

9. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

(0000010)

10. Permittee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

11. Pursuant to California Water Code Sections 100 and 275, and the public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses, prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) to installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action takes into account the public interest and is necessary to protect public trust uses. All such actions shall conform to the standard of reasonableness contained in Article X, Section 2 of the California Constitution.

(0000012)

12. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

13. The State Water Resources Control Board reserves jurisdiction over this permit to impose any appropriate conditions at some future date to conform the permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing. (0000020)

14. Permittee shall consult with the Division of Water Rights and the Department of Water Resources, and develop and implement a water conservation plan or actions. The proposed plan or actions shall be presented to the Board for approval within one year from the date of this permit or such further time as may, for good cause shown, be allowed by the Board. A progress report on the development of a water conservation plan may be required by the Board within this period. (0000029)

15. Permittee shall install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board in order that water entering the reservoir which is not authorized for appropriation under this permit may be released. Before construction permittee shall submit plans and specifications of the outlet pipe to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir permittee shall furnish evidence which substantiates that an outlet has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer. (0050043)

16. Permittee shall not store water under this permit until the Department of Water Resources has approved plans and specifications of the storage dam. (0360048)

17. In accordance with the requirements of Water Code Section 1393, permittee shall clear the site of the proposed reservoir of all structures, trees and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes. (0120050)

18. For the protection of fish and wildlife, the permittee shall bypass all surface flows in Pope Creek when the streamflows in Pope Creek as measured at the permittee's staff gage installed pursuant to Application 24045 (Permit No. 16855) are lower than 10 cubic feet per second from November 1 through April 30. (0140060)

19. In accordance with Section 1601, 1603, and/or Section 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted until permittee has entered into a stream or lake alteration agreement with the Department of Fish and Game and/or the Department has determined that measures to protect fishlife have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of permittee. (0000063)

20. Permittee is hereby put on notice that there may be years when water collected to storage under this permit will not be within the reservation of water established for the watershed upstream from Lake Berryessa in Decision 869. During such years, unless replacement water is provided on an exchange basis, permittee shall release water collected to storage under this permit during the preceding collection season at the maximum practical rate to flow into Lake Berryessa. (0220086)

21. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permittee shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board.

Failure of permittee to comply with this term will subject the permit to revocation, after opportunity for hearing. (0000100)

Application 27209

Permit 19073

22. The total quantity of water diverted under this permit, together with that diverted under the license issued on Applications 24474 and 24475, shall not exceed 250 acre-feet per annum.. (0000114)

23. Permittee shall implement the archeological mitigation measures described in the Final Environmental Impact Report, Buttes Farmland Development Company Timber Harvest and Watercourse Obstruction/Riparian Cover Permit Applications, County of Napa, California. (0000500)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated:

DECEMBER 21 1983

STATE WATER RESOURCES CONTROL BOARD